

Commodity Credit Corporation, USDA

§ 1470.2

(1) Adopted any scheme or device that tends to defeat the purpose of CSP;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a CSP determination, must refund to NRCS all payments, plus interest, and liquidated damages as determined in accordance with §1469.25 received by such participant with respect to all contracts. In addition, NRCS will terminate the participant's interest in all conservation stewardship contracts.

(c) If the producer acquires land subsequent to enrollment in CSP, that land is not considered part of the agricultural operation; however, if the land was previously owned or controlled by them before the date of enrollment and after May 13, 2002, then NRCS will conduct an investigation into the activity to see if there was a scheme or device.

PART 1470—CONSERVATION STEWARDSHIP PROGRAM

Subpart A—General Provisions

Sec.

- 1470.1 Applicability.
- 1470.2 Administration.
- 1470.3 Definitions.
- 1470.4 Allocation and management.
- 1470.5 Outreach activities.
- 1470.6 Eligibility requirements.
- 1470.7 Enhancements and conservation practices.
- 1470.8 Technical and other assistance.

Subpart B—Contracts and Payments

- 1470.20 Application for contracts and selecting offers from applicants.
- 1470.21 Contract requirements.
- 1470.22 Conservation stewardship plan.
- 1470.23 Conservation activity operation and maintenance.
- 1470.24 Payments.
- 1470.25 Contract modifications and transfers of land.
- 1470.26 Contract renewal.
- 1470.27 Contract violations and termination.

Subpart C—General Administration

- 1470.30 Fair treatment of tenants and sharecroppers.
- 1470.31 Appeals.
- 1470.32 Compliance with regulatory measures.
- 1470.33 Access to agricultural operation.
- 1470.34 Equitable relief.
- 1470.35 Offsets and assignments.

1470.36 Misrepresentation and scheme or device.

1470.37 Environmental credits for conservation improvements.

AUTHORITY: 16 U.S.C. 3838d-3838g.

SOURCE: 75 FR 31653, June 3, 2010, unless otherwise noted.

Subpart A—General Provisions

§ 1470.1 Applicability.

(a) This part sets forth the policies, procedures, and requirements for the Conservation Stewardship Program (CSP) as administered by the Natural Resources Conservation Service (NRCS), for enrollment during fiscal year (FY) 2009 and thereafter.

(b) The purpose of CSP is to encourage producers to address resource concerns in a comprehensive manner by:

- (1) Undertaking additional conservation activities; and
- (2) Improving, maintaining, and managing existing conservation activities.

(c) CSP is applicable in any of the 50 States, District of Columbia, Commonwealth of Puerto Rico, Guam, Virgin Islands of the United States, American Samoa, and Commonwealth of the Northern Mariana Islands.

(d) NRCS provides financial assistance and technical assistance to participants for the conservation, protection, and improvement of soil, water, and other related natural resources, and for any similar conservation purpose as determined by NRCS.

§ 1470.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Chief, NRCS, who is a Vice President of the Commodity Credit Corporation (CCC).

(b) The Chief is authorized to modify or waive a provision of this part if the Chief deems the application of that provision to a particular limited situation to be inappropriate and inconsistent with the purposes of the program. This authority cannot be further delegated. The Chief may not modify or waive any provision of this part which is required by applicable law.

(c) To achieve the conservation goals of CSP, NRCS will:

- (1) Make the program available nationwide to eligible applicants on a

§ 1470.3

continuous application basis with one or more ranking periods to determine enrollments. One of the ranking periods will occur in the first quarter of each fiscal year, to the extent practicable; and

(2) Develop conservation measurement tools (CMT) for the purpose of carrying out the program.

(d) During the period beginning on October 1, 2008, and ending on September 30, 2017, NRCS will, to the maximum extent practicable:

(1) Enroll in CSP an additional 12,769,000 acres for each fiscal year; and

(2) Manage CSP to achieve a national average rate of \$18 per acre, which includes the costs of all financial and technical assistance and any other expenses associated with program enrollment and participation.

(e) The State Conservationist will:

(1) Obtain advice from the State Technical Committee and local working groups on the development of State-level technical, outreach, and program matters, including:

(i) Establishment of ranking pools appropriate for the conduct of CSP within the State to ensure program availability and prioritization of conservation activities. Ranking pools may be based on watersheds, geographic areas, or other appropriate regions within a State and may consider high-priority regional and State-level resource concern areas;

(ii) Identification of not less than three, nor more than five priority resource concerns in particular watersheds, geographic areas, or other appropriate regions within a State;

(iii) Identification of resource-conserving crops that will be part of resource-conserving crop rotations;

(iv) Development of design protocols and participation procedures for participation in on-farm research, and demonstration and pilot projects; and

(v) Evaluation of Cooperative Conservation Partnership Initiative (CCPI) projects and allowable program adjustments for the conduct of projects.

(2) Assign NRCS employees as designated conservationists to be responsible for CSP at the local level; and

(3) Be responsible for the program in their assigned State.

7 CFR Ch. XIV (1-1-13 Edition)

(f) NRCS may enter into agreements with Federal, State, and local agencies, conservation districts, Indian tribes, private entities, and individuals to assist NRCS with program implementation.

§ 1470.3 Definitions.

The following definitions will apply to this part and all documents issued in accordance with this part, unless specified otherwise:

Agricultural land means cropland, rangeland, and pastureland on which agricultural products or livestock are produced and resource concerns may be addressed. Agricultural lands may also include other land and incidental areas included in the agricultural operation as determined by NRCS. Other agricultural lands include cropped woodland, marshes, incidental areas included in the agricultural operation, and other types of agricultural land used for production of livestock.

Agricultural operation means all agricultural land and other land, as determined by NRCS, whether contiguous or noncontiguous:

(1) Which is under the effective control of the applicant; and

(2) Which is operated by the applicant with equipment, labor, management, and production or cultivation practices that are substantially separate from other operations.

Animal waste storage or treatment facility means a structural conservation practice used for storing or treating animal waste.

Applicant means a person, legal entity, joint operation, or Indian tribe that has an interest in an agricultural operation, as defined in 7 CFR part 1400, who has requested in writing to participate in CSP.

Beginning farmer or rancher means:

(1) An individual or legal entity who:
(i) Has not operated a farm, ranch, or nonindustrial private forest land (NIPF), or who has operated a farm, ranch, or NIPF for not more than 10 consecutive years (this requirement applies to all members of a legal entity); and

(ii) Will materially and substantially participate in the operation of the farm or ranch.

(2) In the case of a contract with an individual, individually, or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(3) In the case of a contract with a legal entity or joint operation, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

Chief means the Chief of NRCS, or designee.

Conservation activities means conservation systems, practices, or management measures needed to address a resource concern or improve environmental quality through the treatment of natural resources, and includes structural, vegetative, and management activities as determined by NRCS.

Conservation district means any district or unit of State, tribal, or local government formed under State, tribal, or territorial law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a "conservation district," "soil conservation district," "soil and water conservation district," "resource conservation district," "land conservation committee," "natural resource district," or similar name.

Conservation measurement tool means procedures developed by NRCS to estimate the level of environmental benefit to be achieved by a producer using the proxy of conservation performance.

Conservation planning means using the planning process outlined in the applicable National Planning Procedures Handbook (NPPH).

Conservation practice means a specified treatment, such as a structural or vegetative practice or management

technique, commonly used to meet a specific need in planning and carrying out conservation programs for which standards and specifications have been developed. Conservation practices are in the NRCS Field Office Technical Guide, section IV, which is based on the National Handbook of Conservation Practices.

Conservation stewardship plan means a record of the participant's decisions that describes the schedule of conservation activities to be implemented, managed, or improved. Associated supporting information that identifies and inventories resource concerns and existing conservation activities, establishes benchmark data, and documents the participant's conservation objectives will be maintained with the plan.

Conservation system means a combination of conservation practices, management measures, and enhancements used to address natural resource and environmental concerns in a comprehensive, holistic, and integrated manner.

Contract means a legal document that specifies the rights and obligations of any participant who has been accepted into the program. A CSP contract is an agreement for the transfer of assistance from NRCS to the participant for installing, adopting, improving, managing, and maintaining conservation activities.

Designated conservationist means an NRCS employee whom the State Conservationist has designated as responsible for CSP at the local level.

Effective control means possession of the land by ownership, written lease, or other legal agreement and authority to act as decisionmaker for the day-to-day management of the operation both at the time the applicant enters into a stewardship contract and for the required period of the contract.

Enhancement means a type of conservation activity used to treat natural resources and improve conservation performance. Enhancements are installed at a level of management intensity that exceeds the sustainable level for a given resource concern, and those enhancements directly related to a practice standard are applied in a manner that exceeds the minimum treatment requirements of the standard.

Enrollment means for the initial sign-up for FY 2009, NRCS will consider a participant “enrolled” in CSP based on the fiscal year the application is submitted, once NRCS approves the participant’s contract. For subsequent ranking cut-off periods, NRCS will consider a participant enrolled in CSP based on the fiscal year the contract is approved.

Field office technical guide means the official local NRCS source of resource information and interpretations of guidelines, criteria, and standards for planning and applying conservation practices and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Indian lands means all lands held in trust by the United States for individual Indians or Indian tribes, or all land titles held by individual Indians or tribes, subject to Federal restrictions against alienation or encumbrance, or lands subject to the rights of use, occupancy, or benefit of certain Indian tribes. This term also includes lands for which the title is held in fee status by Indian tribes and the U.S. Government-owned land under the Bureau of Indian Affairs (BIA) jurisdiction.

Indian Tribe means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Joint operation means, as defined in part 1400 of this chapter, a general partnership, joint venture, or other similar business arrangement in which the members are jointly and severally liable for the obligations of the organization.

Legal entity means, as defined in part 1400 of this chapter, an entity created under Federal or State law.

Limited Resource Farmer or Rancher means:

(1) A person with direct or indirect gross farm sales not more than the current indexed value in each of the previous 2 years (\$142,000 is the amount for 2010, adjusted for inflation using Prices Paid by Farmer Index as compiled by the National Agricultural Statistical Service); and

(2) Has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous 2 years (to be determined annually using Department of Commerce Data).

Liquidated damages means a sum of money stipulated in the CSP contract that the participant agrees to pay NRCS if the participant fails to fulfill the terms of the contract. The sum represents an estimate of the technical assistance expenses incurred to service the contract, and reflects the difficulties of proof of loss and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

Local working group means the advisory body as described in 7 CFR part 610.

Management measure means one or more specific actions that is not a conservation practice, but has the effect of alleviating problems or improving the treatment of the natural resources.

National Organic Program means the program, administered by the Department of Agriculture (USDA) Agricultural Marketing Service, which regulates the standards for any farm, wild crop harvesting, or handling operation that wants to market an agricultural product as organically produced.

Natural Resources Conservation Service means an agency of USDA which has responsibility for administering CSP using the funds, facilities, and authorities of the CCC.

Nonindustrial private forest land means rural land that has existing tree cover or is suitable for growing trees, and is owned by an individual, group, association, corporation, Indian tribe, or other private legal entity that has definitive decisionmaking authority over the land.

Operation and maintenance means work performed by the participant to

maintain existing conservation activities to at least the level of conservation performance identified at the time the application is obligated into a contract, and maintain additional conservation activities installed and adopted over the contract period.

Participant means a person, legal entity, joint operation, or Indian tribe that is receiving payment or is responsible for implementing the terms and conditions of a CSP contract.

Payment means financial assistance provided to the participant under the terms of the CSP contract.

Person means, as defined in part 1400 of this chapter, an individual, natural person and does not include a legal entity.

Priority resource concern means a resource concern that is identified by the State Conservationist, in consultation with the State Technical Committee and local working groups, as a priority for a State, or the specific geographic areas within a State.

Producer means a person, legal entity, joint operation, or Indian tribe who has an interest in the agricultural operation, as defined in part 1400 of this chapter, or who is engaged in agricultural production or forest management.

Resource concern means a specific natural resource problem that is likely to be addressed successfully through the implementation of conservation activities by producers.

Resource-conserving crop means a crop that is one of the following:

- (1) A perennial grass;
- (2) A legume grown for use as forage, seed for planting, or green manure;
- (3) A legume-grass mixture;
- (4) A small grain grown in combination with a grass or legume, whether inter-seeded or planted in rotation.

Resource-conserving crop rotation means a crop rotation that:

- (1) Includes at least one resource-conserving crop as determined by the State Conservationist;
- (2) Reduces erosion;
- (3) Improves soil fertility and tilth;
- (4) Interrupts pest cycles; and
- (5) In applicable areas, reduces depletion of soil moisture or otherwise reduces the need for irrigation.

Secretary means the Secretary of USDA.

Socially disadvantaged farmer or rancher means a producer who has been subjected to racial or ethnic prejudices because of their identity as a member of a group without regard to their individual qualities. A socially disadvantaged group is a group whose members have been subject to racial or ethnic prejudice because of their identity as members of a group, without regard to their individual qualities. These groups consist of American Indians or Alaskan Natives, Asians, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, and Hispanics. A socially disadvantaged applicant is an individual or entity who is a member of a socially disadvantaged group. For an entity, at least 50 percent ownership in the farm business must be held by socially disadvantaged individuals.

State Conservationist means the NRCS employee authorized to implement CSP and direct and supervise NRCS activities in a State, Caribbean Area, or Pacific Islands Area.

State Technical Committee means a committee established by the Secretary in a State pursuant to 16 U.S.C. 3861.

Stewardship threshold means the level of natural resource conservation and environmental management required, as determined by NRCS using the CMT, to conserve and improve the quality and condition of a natural resource.

Technical assistance means technical expertise, information, and tools necessary for the conservation of natural resources on land active in agricultural, forestry, or related uses. The term includes the following:

- (1) Technical services provided directly to farmers, ranchers, forest producers, and other eligible entities, such as conservation planning, technical consultation, preparation of forest stewardship management plans, and assistance with the design and implementation of conservation activities; and
- (2) Technical infrastructure, including processes, tools, and agency functions needed to support delivery of technical services, such as technical standards, resource inventories, training, data, technology, monitoring, and effects analyses.

§ 1470.4

Technical Service Provider means an individual, private-sector entity, or public agency certified by NRCS to provide technical services to program participants in lieu of, or on behalf of, NRCS as referenced in 7 CFR part 652.

§ 1470.4 Allocation and management.

(a) The Chief will allocate acres and associated funds to State Conservationists:

(1) Primarily on each State's proportion of eligible land to the total amount of eligible land in all States; and

(2) On consideration of:

(i) The extent and magnitude of the conservation needs associated with agricultural production in each State based on natural resource factors that consider national, regional, and State-level priority ecosystem areas,

(ii) The degree to which implementation of the program in the State is, or will be, effective in helping producers address those needs, and

(iii) Other considerations determined by the Chief to achieve equitable geographic distribution of program participation.

(b) The State Conservationist will allocate acres to ranking pools, to the extent practicable, based on the same factors the Chief considers in making allocations to States.

(c) Of the acres made available for each of fiscal years 2009 through 2012 to carry out CSP, NRCS will use, as a minimum:

(1) Five percent to assist beginning farmers or ranchers, and

(2) Five percent to assist socially disadvantaged farmers or ranchers.

(d) In any fiscal year, allocated acres that are not enrolled by a date determined by NRCS may be reallocated with associated funds for use in that fiscal year under CSP. As part of the reallocation process, NRCS will consider several factors, including demand from applicants, national and regional conservation priorities, and prior-year CSP performance in States.

(e) Of the CSP funds and acres made available for each fiscal year:

(1) The Chief will reserve 6 percent of funds and acres to ensure an adequate source of funds and acres for the CCPI.

7 CFR Ch. XIV (1-1-13 Edition)

Of the funds and acres reserved, the Chief will allocate:

(i) Ninety percent to projects based on the direction of State Conservationists, with the advice of State Technical Committees; and

(ii) Ten percent to projects based on a national competitive process established by the Chief. In determining funding allocation decisions for these projects, NRCS will consider the extent to which they address national and regional conservation priorities.

(2) Any funds and acres reserved for the CCPI in a fiscal year that are not obligated by April 1 of that fiscal year may be used to carry out other CSP activities during the remainder of that fiscal year.

§ 1470.5 Outreach activities.

(a) NRCS will establish program outreach activities at the national, State, and local levels to ensure that potential applicants who control eligible land are aware and informed that they may be eligible to apply for program assistance.

(b) Special outreach will be made to eligible producers with historically low participation rates, including but not restricted to, beginning farmers or ranchers, limited resource farmers or ranchers, and socially disadvantaged farmers or ranchers.

(c) NRCS will ensure that outreach is provided so as not to limit producer participation because of size or type of operation or production system, including specialty crop and organic production.

(d) NRCS will conduct focused outreach in regions of national significance in order to maximize program participation. These areas could include landscapes such as the Chesapeake Bay watershed and Great Lakes basin.

§ 1470.6 Eligibility requirements.

(a) *Eligible applicant.* To be an eligible applicant for CSP, a producer must be the operator in the Farm Service Agency (FSA) farm records management system. Potential applicants that are not in the FSA farm records management system must establish records with FSA. Potential applicants whose records are not current in the FSA

farm records management system must update those records prior to the close of the evaluation period to be considered eligible. NRCS may grant exceptions to the “operator of record” requirement for producers, tenants, and owners in the FSA farm records management system that can demonstrate, to the satisfaction of NRCS, they will operate and have effective control of the land. Applicants must also meet all of the following requirements:

(1) Have effective control of the land unless an exception is made by the Chief in the case of land administered by the BIA, Indian lands, or other instances in which the Chief determines that there is sufficient assurance of control;

(2) Be in compliance with the highly erodible land and wetland conservation provisions found at 7 CFR part 12;

(3) Be in compliance with Adjusted Gross Income provisions found at 7 CFR part 1400;

(4) Supply information, as required by NRCS, to determine eligibility for the program, including but not limited to, information related to eligibility requirements and ranking factors, conservation activity and production system records, information to verify the applicant’s status as a historically underserved producer, if applicable, and payment eligibility as established by 7 CFR part 1400;

(5) Provide a list of all members of the legal entity and embedded entities along with members’ tax identification numbers and percentage interest in the entity. Where applicable, American Indians, Alaska Natives, and Pacific Islanders may use another unique identification number for each individual eligible for payment; and

(6) Comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282, as amended), and 2 CFR parts 25 and 170.

(b) *Eligible land.* A contract application must include all of the eligible land on an applicant’s agricultural operation, except as identified in paragraph (b)(3) of this section. A participant may submit an application(s) to enter into an additional contract(s) for newly acquired eligible land, which

would then compete with other applications in a subsequent ranking period. The land as described below is part of the agricultural operation and eligible for enrollment in the CSP:

(1) Private agricultural land;

(2) Agricultural Indian lands;

(3) NIPF:

(i) By special rule in the statute, NIPF is eligible land,

(ii) No more than 10 percent of the acres enrolled nationally in any fiscal year may be NIPF,

(iii) The applicant will designate by submitting a separate application if they want to offer NIPF for funding consideration,

(iv) If designated for funding consideration, then the NIPF component of the operation will include all the applicant’s NIPF. If not designated for funding consideration, then the applicant’s NIPF will not be part of the agricultural operation; and

(4) Other private agricultural land, as determined by the Chief, on which resource concerns related to agricultural production could be addressed by enrolling the land in CSP.

(c) *Ineligible land.* The following ineligible lands are part of the agricultural operation, but ineligible for inclusion in the contract or for payment in CSP:

(1) Land enrolled in the Conservation Reserve Program (CRP), 7 CFR part 1410;

(2) Land enrolled in the Wetlands Reserve Program (WRP), 7 CFR part 1467;

(3) Land enrolled in the Grassland Reserve Program (GRP), 7 CFR part 1415;

(4) Land enrolled in the Conservation Security Program, 7 CFR part 1469;

(5) Public land including land owned by a Federal, State, or local unit of government; and

(6) Land used for crop production after June 18, 2008, that had not been planted, considered to be planted, or devoted to crop production for at least 4 of the 6 years preceding that date, unless that land:

(i) Had previously been enrolled in CRP,

(ii) Has been maintained using long-term crop rotation practices as determined by the designated conservationist, or

§ 1470.7

(iii) Is incidental land needed for efficient operation of the farm or ranch as determined by the designated conservationist.

[75 FR 31653, June 3, 2010, as amended at 76 FR 19684, Apr. 8, 2011]

§ 1470.7 Enhancements and conservation practices.

(a) Participant decisions describing the additional enhancements and conservation practices to be implemented under the conservation stewardship contract will be recorded in the conservation stewardship plan.

(b) NRCS will make available to the public the list of enhancements and conservation practices available to be installed, adopted, maintained, and managed through the CSP.

(c) NRCS will make available bundled suites of conservation activities for participants to voluntarily select to include as part of their conservation stewardship plans. The bundles will be designed to coordinate the installation and adoption of enhancements with each other to address resource concerns in a more comprehensive and cost-effective manner.

(d) CSP encourages the use of other NRCS programs to install conservation practices that are required to meet agreed-upon stewardship thresholds, but the practices may not be compensated through CSP.

§ 1470.8 Technical and other assistance.

(a) NRCS may provide technical assistance to an eligible applicant or participant either directly or through a technical service provider (TSP) as set forth in 7 CFR part 652.

(b) NRCS retains approval authority over certification of work done by non-NRCS personnel for the purpose of approving CSP payments.

(c) NRCS will ensure that technical assistance is available and program specifications are appropriate so as not to limit producer participation because of size or type or operation or production system, including specialty crop and organic production. In providing technical assistance to specialty crop and organic producers, NRCS will provide appropriate training to field staff to enable them to work with these pro-

7 CFR Ch. XIV (1–1–13 Edition)

ducers and to utilize cooperative agreements and contracts with nongovernmental organizations with expertise in delivering technical assistance to these producers.

(d) NRCS will assist potential applicants dealing with the requirements of certification under the National Organic Program and CSP requirements concerning how to coordinate and simultaneously meet eligibility standards under each program.

(e) NRCS may utilize the services of State foresters and existing technical assistance programs such as the Forest Stewardship Program of the U.S. Forest Service, in coordinating assistance to NIPF owners.

Subpart B—Contracts and Payments

§ 1470.20 Application for contracts and selecting offers from applicants.

(a) *Submission of contract applications.* Applicants may submit an application to enroll all of their eligible land into CSP on a continuous basis.

(b) *Stewardship threshold requirement.* To be eligible to participate in CSP, an applicant must submit to the designated conservationist for approval, a contract application that:

(1) Indicates the applicant's conservation activities, at the time of application, are meeting the stewardship threshold for at least one resource concern;

(2) Would, at a minimum, meet or exceed the stewardship threshold for at least one priority resource concern in addition to the resource concern described in paragraph (b)(1) of this section by the end of the conservation stewardship contract by:

(i) Installing and adopting additional conservation activities, and

(ii) Improving, maintaining, and managing conservation activities present on the agricultural operation at the time the contract application is accepted by NRCS;

(3) Provides a map, aerial photograph, or overlay that:

(i) Identifies the applicant's agricultural operation and NIPF component of the operation, and

(ii) Delineates eligible land with associated acreage amounts; and

Commodity Credit Corporation, USDA

§ 1470.21

(4) If the applicant is applying for on-farm research and demonstration activities or for pilot testing, describes the nature of the research, demonstration, or pilot testing in a manner consistent with design protocols and application procedures established by NRCS.

(c) *Evaluation of contract applications.* NRCS will conduct one or more ranking periods each fiscal year.

(1) To the extent practicable, one ranking period will occur in the first quarter of the fiscal year;

(2) In evaluating CSP applications, the State Conservationist or designated conservationist will rank applications based on the following factors, using the CMT, to the maximum extent practicable:

(i) Level of conservation treatment on all applicable priority resource concerns at the time of application,

(ii) Degree to which the proposed conservation treatment on applicable priority resource concerns effectively increases conservation performance,

(iii) Number of applicable priority resource concerns proposed to be treated to meet or exceed the stewardship threshold by the end of the contract, and

(iv) Extent to which other resource concerns, in addition to priority resource concerns, will be addressed to meet or exceed the stewardship threshold by the end of the contract period;

(3) In the event that application ranking scores from (2) above are similar, the application that represents the least cost to the program will be given higher priority; and

(4) The State Conservationist or designated conservationist may not assign a higher priority to any application because the applicant is willing to accept a lower payment than the applicant would otherwise be eligible to receive.

(d) *Weighting of ranking factors.* To the extent the CSP objective of additional conservation is not being achieved, as determined by the Chief, NRCS will adjust the weighting of ranking factors in order to place emphasis on increasing net conservation benefits.

(e) *State and local priorities.* The Chief may develop and use additional criteria for evaluating applications that

are determined necessary to ensure that national, State, and local conservation priorities are effectively addressed.

(f) *Ranking pools.* Ranking pools will be established in accordance with §1470.2(e)(1)(i).

(1) NIPF will compete in ranking pools separate from agricultural land. An applicant with both NIPF and agricultural land will have the options to submit:

(i) One application for NIPF;

(ii) One application for agricultural land; or

(iii) Two applications, one for each land type.

(2) An applicant with an agricultural operation or NIPF component of the operation that crosses ranking pool boundaries will make application and be ranked in the ranking pool where the largest acreage portion of their operation occurs.

(3) Within each State or established ranking pool, the State Conservationist will address conservation access for certain farmers or ranchers, including:

(i) Socially disadvantaged farmers or ranchers; and

(ii) Beginning farmers or ranchers.

(g) *Application pre-approval.* The State Conservationist or designated conservationist will make application pre-approval determinations during established ranking periods based on eligibility and ranking score.

(h) *Field verification.* NRCS will conduct onsite field verification prior to obligation of contract funding to substantiate the accuracy of the information provided by pre-approved applicants during the application process.

§ 1470.21 Contract requirements.

(a) After a determination that the application will be approved and a conservation stewardship plan will be developed in accordance with §1470.22, the State Conservationist or designee will enter into a conservation stewardship contract with the participant to enroll all of the eligible land on a participant's agricultural operation.

(b) The conservation stewardship contract will:

(1) Provide for payments over a period of 5 years;

§ 1470.22

(2) Incorporate by reference the conservation stewardship plan;

(3) State the payment amount NRCS agrees to make to the participant annually, subject to the availability of funds;

(4) Incorporate all provisions as required by law or statute, including requirements that the participant will:

(i) Implement the conservation stewardship plan approved by NRCS during the term of the contract,

(ii) Operate and maintain conservation activities on the agricultural operation consistent with §1470.23,

(iii) Comply with the terms of the contract or documents incorporated by reference into the contract,

(iv) Refund as determined by NRCS, any program payments received with interest, and forfeit any future payments under the program, upon the violation of a term or condition of the contract, consistent with §1470.27,

(v) Refund as determined by NRCS, all program payments received with interest, upon the transfer of the right and interest of the participant, in land subject to the contract, unless the transferee of the right and interest agrees to assume all obligations of the contract, consistent with §1470.25,

(vi) Maintain and make available to NRCS upon request, appropriate records documenting applied conservation activity and production system information, and provide evidence of the effective and timely implementation of the conservation stewardship plan and contract, and

(vii) Not engage in any action during the term of the conservation stewardship contract on the eligible land covered by the contract that would interfere with the purposes of the conservation stewardship contract;

(5) Permit all economic uses of the land that:

(i) Maintain the agricultural or forestry nature of the land, and

(ii) Are consistent with the conservation purposes of the contract;

(6) Include a provision to ensure that a participant will not be considered in violation of the contract for failure to comply with the contract due to circumstances beyond the control of the participant, including a disaster or re-

7 CFR Ch. XIV (1-1-13 Edition)

lated condition, as determined by the State Conservationist; and

(7) Include such other provisions as NRCS determines necessary to ensure the purposes of the program are achieved.

§ 1470.22 Conservation stewardship plan.

(a) NRCS will use the conservation planning process as outlined in the NPPH to encourage participants to address resource concerns in a comprehensive manner.

(b) The conservation stewardship plan will contain a record of the participant's decisions that describes the schedule of conservation activities to be implemented, managed, or improved under the conservation stewardship contract.

(c) Associated supporting information maintained with the participant's plan will include:

(1) CMT documentation that will be the basis for:

(i) Identifying and inventorying resource concerns,

(ii) Establishing benchmark data on the condition of existing conservation activities, and

(iii) Documenting the participant's conservation objectives to reach and exceed stewardship thresholds;

(2) A plan map delineating enrolled land with associated acreage amounts;

(3) In the case where a participant wishes to initiate or retain organic certification, documentation that will support the participant's transition to or participation in the National Organic Program;

(4) In the case where a participant is approved for the on-farm research and demonstration or pilot testing option, a research, demonstration, or pilot testing plan consistent with design protocols and application procedures established by NRCS; and

(5) Other information as determined appropriate by NRCS.

§ 1470.23 Conservation activity operation and maintenance.

The participant will maintain and manage existing conservation activities on the agricultural operation to at

least the level of conservation performance identified at the time the application is obligated into a contract for the conservation stewardship contract period, and additional activities installed and adopted over the term of the conservation stewardship contract.

§ 1470.24 Payments.

(a) *Annual payments.* Subject to the availability of funds, NRCS will provide, as appropriate, annual payments under the program to compensate a participant for installing and adopting additional conservation activities, and improving, maintaining, and managing existing conservation activities. A split-rate annual payment structure will be used to provide separate payments for additional and existing conservation activities in order to place emphasis on implementing additional conservation.

(1) To receive annual payments, a participant must:

(i) Install and adopt additional conservation activities as scheduled in the conservation stewardship plan. At least one additional enhancement must be scheduled, installed, and adopted in the first fiscal year of the contract. All enhancements must be scheduled, installed, and adopted by the end of the third fiscal year of the contract, and

(ii) As a minimum, maintain existing activities to the level of existing conservation performance identified at the time the application is obligated into a contract for the conservation stewardship contract period;

(2) To earn annual payments for an eligible land use, a participant must schedule, install, and adopt at least one additional conservation activity on that land-use type. Eligible land-use types that fail to have at least one additional conservation activity scheduled, installed, and adopted will not receive annual payments;

(3) A participant's annual payments will be determined using the conservation performance estimated by the CMT and computed by land-use type for eligible land earning payments. Conservation performance is prorated over the contract term so as to accommodate, to the extent practicable, participants earning equal annual payments in each fiscal year;

(4) The annual payment rates will be based to the maximum extent practicable, on the following factors:

(i) Costs incurred by the participant associated with planning, design, materials, installation, labor, management, maintenance, or training,

(ii) Income foregone by the participant, and

(iii) Expected environmental benefits, determined by estimating conservation performance improvement using the CMT;

(5) The annual payment method will accommodate some participant operational adjustments without the need for contract modification.

(i) Enhancements may be replaced with similar enhancements without adjustment of annual payment as long as the conservation performance is determined by NRCS to be equal to or better than the conservation performance of the additional enhancements offered at enrollment. An enhancement replacement that results in a decline below that conservation performance level will not be allowed, and

(ii) Adjustments to existing activities may occur consistent with conservation performance requirements from §1470.23; and

(6) Enhancements may be applied on other land included in an agricultural operation, as determined by NRCS.

(b) *Supplemental payments.* Subject to the availability of funds, NRCS will provide a supplemental payment to a participant receiving annual payments, who also agrees to adopt a resource-conserving crop rotation.

(1) The State Conservationist will determine whether a resource-conserving crop rotation is eligible for supplemental payments based on whether the resource-conserving crop rotation is designed to provide natural resource conservation and production benefits;

(2) A participant must agree to adopt and maintain a beneficial resource-conserving crop rotation for the term of the contract to be eligible to receive a supplemental payment. A resource-conserving crop rotation is considered adopted when the resource-conserving crop is planted on at least one-third of the rotation acres. The resource-conserving crop must be adopted by the third fiscal year of the contract and

§ 1470.24

7 CFR Ch. XIV (1-1-13 Edition)

planted on all rotation acres by the fifth fiscal year of the contract; and

(3) The supplemental payment is set at a rate needed to encourage a producer to adopt a resource-conserving crop rotation and will be based, to the maximum extent practicable, on costs incurred and income foregone by the participant and expected environmental benefits, determined by estimating conservation performance improvement using the CMT.

(c) *On-farm research and demonstration or pilot testing.* A participant may be compensated through their annual payment for:

(1) On-farm research and demonstration activities; or

(2) Pilot testing of new technologies or innovative conservation activities.

(d) *Minimum contract payment.* NRCS will make a minimum contract payment to participants who are socially disadvantaged farmers or ranchers, beginning farmers or ranchers, or limited resource farmers or ranchers, at a rate determined by the Chief in any fiscal year that a contract's payment amount total is less than \$1,000. Definitions of socially disadvantaged farmers or ranchers, beginning farmers or ranchers, and limited resource farmers or ranchers are contained in §1470.3.

(e) *Timing of payments.* NRCS will make payments as soon as practicable after October 1 of each fiscal year for activities carried out in the previous fiscal year. For newly enrolled contracts, payments will be made as soon as practicable after October 1 following the fiscal year of enrollment.

(f) *Non-compensatory matters.* A CSP payment to a participant will not be provided for:

(1) New conservation practices or enhancements applied with financial assistance through other USDA conservation programs;

(2) The design, construction, or maintenance of animal waste storage or treatment facilities, or associated waste transport or transfer devices for animal feeding operations; or

(3) Conservation activities for which there is no cost incurred or income foregone by the participant.

(g) *Payment limits.* A person or legal entity may not receive, directly or indirectly, payments that, in the aggregate,

exceed \$40,000 during any fiscal year for all CSP contracts entered into, and \$200,000 for all CSP contracts entered into during any 5-year period, excluding funding arrangements with federally recognized Indian tribes or Alaska Native corporations, regardless of the number of contracts entered into under the CSP by the person or legal entity.

(h) *Contract limits.* Payments under a conservation stewardship contract with joint operations will be limited to \$80,000 per fiscal year and \$400,000 over the term of the initial contract period, excluding funding arrangements with federally recognized Indian tribes or Alaska Native corporations. The payment limits for contracts with persons or legal entities are contained in §1470.24(g).

(i) *Payment limitation provisions for individual Indians and Indian tribes.* Payment limitations apply to individual tribal member(s) when applying and subsequently being granted a contract as an individual(s). Contracts with Indian tribes or Alaska Native corporations are not subject to payment or contract limitations. Indian tribes and BIA will certify in writing that no one individual, directly or indirectly, will receive more than the payment limitation. Certification provided at the time of contract obligation will cover the entire contract period. The tribal entity must also provide, upon request from NRCS, a listing of individuals and payment made, by Social Security number or other unique identification number, during the previous year for calculation of overall payment limitations.

(j) *Tax Identification Number.* To be eligible to receive a CSP payment, all legal entities or persons applying, either alone or as part of a joint operation, must provide a tax identification number and percentage interest in the legal entity. In accordance with 7 CFR part 1400, an applicant applying as a joint operation or legal entity must provide a list of all members of the legal entity and joint operation and associated embedded entities, along with the members' Social Security numbers and percentage of interest in the joint operation or legal entity. Payments

Commodity Credit Corporation, USDA

§ 1470.27

will be directly attributed to legal entity members for the purpose of complying with §1470.24(g).

(k) *Unique tax identification numbers.* Where applicable, American Indians, Alaska Natives, and Pacific Islanders may use another unique identification number for each individual eligible for payment. Any participant that utilizes a unique identification number as an alternative to a tax identification number will utilize only that identifier for any and all other CSP contracts to which the participant is a party. Violators will be considered to have provided fraudulent representation and be subject to full penalties of §1470.36.

(1) *Payment data.* NRCS will maintain detailed and segmented data on CSP contracts and payments to allow for quantification of the amount of payments made for:

(1) Installing and adopting additional activities;

(2) Improving, maintaining, and managing existing activities;

(3) Participation in research and demonstration or pilot projects; and

(4) Development and periodic assessment and evaluation of conservation stewardship plans developed under this rule.

§ 1470.25 Contract modifications and transfers of land.

(a) NRCS may allow a participant to modify a conservation stewardship contract if NRCS determines that the modification is consistent with achieving the purposes of the program.

(b) NRCS will allow modification to a conservation stewardship contract to remove contract acres enrolled in the CRP, WRP, or GRP or other Federal or State programs that offer greater natural resource protection. Such modifications are consistent with the purposes of CSP. Participants will not be subject to liquidated damages or refund of payments received for enrolling land in these programs.

(c) NRCS will not allow a participant to modify a conservation stewardship contract to increase the contract obligation beyond the amount of the initial contract, with exception for contracts approved by NRCS for renewal or other exceptional cases as determined by the Chief.

(d) Land under contract will be considered transferred if the participant loses control of the acreage for any reason.

(1) The participant is responsible to notify NRCS prior to any voluntary or involuntary transfer of land under contract;

(2) If all or part of the land under contract is transferred, the contract terminates with respect to the transferred land unless:

(i) The transferee of the land provides written notice within 60 days to NRCS that all duties and rights under the contract have been transferred to, and assumed by, the transferee, and

(ii) The transferee meets the eligibility requirements of the program; and

(e) Contract payment adjustments due to modifications will be reflected in the fiscal year following the modification.

§ 1470.26 Contract renewal.

(a) At the end of an initial conservation stewardship contract, NRCS may allow a participant to renew the contract to receive payments for one additional 5-year period, subject to the availability of funds, if they meet criteria from paragraph (b) of this section.

(b) To be considered for contract renewal, the participant must:

(1) Be in compliance with the terms of their initial contract as determined by NRCS;

(2) Add any newly acquired eligible land that is part of the agricultural operation and meets minimum treatment criteria as established and determined by NRCS;

(3) At a minimum, meet stewardship thresholds for at least two priority resource concerns; and

(4) Agree to adopt additional conservation activities to address at least one additional priority resource concern during the term of the renewed conservation stewardship contract.

§ 1470.27 Contract violations and termination.

(a) The State Conservationist may terminate, or by mutual consent with the participants, terminate a contract where:

§ 1470.30

(1) The participants are unable to comply with the terms of the contract as the result of conditions beyond their control; or

(2) As determined by the State Conservationist, it is in the public interest.

(b) If a contract is terminated in accordance with the provisions of paragraph (a) of this section, the State Conservationist may allow the participant to retain a portion of any payments received appropriate to the effort the participant has made to comply with the contract, or in cases of hardship, where forces beyond the participant's control prevented compliance with the contract. If a participant claims hardship, such claims must be clearly documented and cannot have existed when the applicant applied for participation in the program.

(c) If NRCS determines that a participant is in violation of the contract terms or documents incorporated therein, NRCS will give the participant a period of time, as determined by NRCS, to correct the violation and comply with the contract terms and attachments thereto. If a participant continues in violation, NRCS may terminate the CSP contract in accordance with paragraph (e) of this section.

(d) Notwithstanding the provisions of paragraph (c) of this section, a contract termination will be effective immediately upon a determination by NRCS that the participant:

(1) Has submitted false information or filed a false claim;

(2) Engaged in any act, scheme, or device for which a finding of ineligibility for payments is permitted under the provisions of § 1470.36; or

(3) Engaged in actions that are deemed to be sufficiently purposeful or negligent to warrant a termination without delay.

(e) If NRCS terminates a contract, the participant will forfeit all rights to future payments under the contract, pay liquidated damages, and refund all or part of the payments received, plus interest. Participants violating CSP contracts may be determined ineligible for future NRCS-administered conservation program funding.

(1) NRCS may require a participant to provide only a partial refund of the

7 CFR Ch. XIV (1-1-13 Edition)

payments received if a previously installed conservation activity has achieved the expected conservation performance improvement, is not adversely affected by the violation or the absence of other conservation activities that would have been installed under the contract, and has met the associated operation and maintenance requirement of the activity; and

(2) NRCS will have the option to reduce or waive the liquidated damages, depending upon the circumstances of the case—

(i) When terminating a contract, NRCS may reduce the amount of money owed by the participant by a proportion that reflects the good faith effort of the participant to comply with the contract or the existence of hardships beyond the participant's control that have prevented compliance with the contract. If a participant claims hardship, that claim must be well documented and cannot have existed when the applicant applied for participation in the program, and

(ii) In carrying out its role in this section, NRCS may consult with the local conservation district.

Subpart C—General Administration

§ 1470.30 Fair treatment of tenants and sharecroppers.

Payments received under this part must be divided in the manner specified in the applicable contract. NRCS will ensure that tenants and sharecroppers who would have an interest in acreage being offered receive treatment which NRCS deems to be equitable, as determined by the Chief. NRCS may refuse to enter into a contract when there is a disagreement among joint applicants seeking enrollment as to an applicant's eligibility to participate in the contract as a tenant.

§ 1470.31 Appeals.

A participant may obtain administrative review of an adverse decision under this part in accordance with 7 CFR parts 11 and 614. Determinations in matters of general applicability, such as payment rates, payment limits, the designation of identified priority

Commodity Credit Corporation, USDA

§ 1470.36

resource concerns, and eligible conservation activities are not subject to appeal.

§ 1470.32 Compliance with regulatory measures.

Participants will be responsible for obtaining the authorities, rights, easements, permits, or other approvals or legal compliance necessary for the implementation, operation, and maintenance associated with the conservation stewardship plan. Participants will be responsible for compliance with all laws and for all effects or actions resulting from the implementation of the contract.

§ 1470.33 Access to agricultural operation.

NRCS, or its authorized representative, will have the right to enter an agricultural operation for the purpose of determining eligibility and for ascertaining the accuracy of any representations, including natural resource information provided by an applicant for the purpose of evaluating a contract application. Access will include the right to provide technical assistance, determine eligibility, assess natural resource conditions, inspect any work undertaken under the contract, and collect information necessary to evaluate the implementation of conservation activities in the contract. NRCS, or its authorized representative, will make an effort to contact the participant prior to the exercise of this provision.

§ 1470.34 Equitable relief.

(a) If a participant relied upon the advice or action of NRCS and did not know, or have reason to know, that the action or advice was improper or erroneous, the participant may be eligible for equitable relief under 7 CFR part 635. The financial or technical liability for any action by a participant that was taken based on the advice of a TSP will remain with the TSP and will not be assumed by NRCS.

(b) If a participant has been found in violation of a provision of the conservation stewardship contract or any document incorporated by reference through failure to comply fully with that provision, the participant may be

eligible for equitable relief under 7 CFR part 635.

§ 1470.35 Offsets and assignments.

(a) Any payment or portion thereof due to any participant under this part will be allowed without regard to any claim or lien in favor of any creditor, except agencies of the United States Government. The regulations governing offsets and withholdings found at 7 CFR part 1403 will be applicable to contract payments.

(b) Any participant entitled to any payment may assign such payments in accordance with regulations governing assignment of payment found at 7 CFR part 1404.

§ 1470.36 Misrepresentation and scheme or device.

(a) If NRCS determines that an applicant intentionally misrepresented any fact affecting a CSP determination, the application will be determined ineligible immediately.

(b) A participant who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part will not be entitled to contract payments and must refund to NRCS all payments, plus interest determined in accordance with 7 CFR part 1403.

(c) A participant will refund to NRCS all payments, plus interest determined in accordance with 7 CFR part 1403, received by such participant with respect to all CSP contracts if they are determined to have:

(1) Adopted any scheme or device that tends to defeat the purpose of the program;

(2) Made any fraudulent representation;

(3) Adopted any scheme or device for the purpose of depriving any tenant or sharecropper of the payments to which such person would otherwise be entitled under the program; or

(4) Misrepresented any fact affecting a program determination.

(d) Participants determined to have committed actions identified in paragraph (c) of this section will:

(1) Have their interest in all CSP contracts terminated; and

§ 1470.37

7 CFR Ch. XIV (1-1-13 Edition)

(2) In accordance with §1470.27(e), may be determined by NRCS to be ineligible for future NRCS-administered conservation program funding.

§1470.37 Environmental credits for conservation improvements.

NRCS believes that environmental benefits will be achieved by implementing conservation activities funded through CSP. These environmental benefits may result in opportunities for the program participant to sell environmental credits. Any requirements related to these environmental credits

must be compatible with the purposes of the contract. NRCS asserts no direct or indirect interest on these credits. However, NRCS retains the authority to ensure that operation and maintenance (O&M) requirements for CSP-funded improvements are met, consistent with §1470.21 and §1470.23. Where actions may impact the land and conservation activities under a CSP contract, NRCS will at the request of the participant, assist with the development of an O&M compatibility assessment prior to the participant entering into any credit agreement.